

**Federal Defenders  
OF NEW YORK, INC.**

Southern District  
52 Duane Street-10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

*David E. Patton*  
Executive Director  
and Attorney-in-Chief

Southern District of New York  
*Jennifer L. Brown*  
Attorney-in-Charge

November 23, 2020

By ECF

Honorable Paul A. Crotty  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

12/3/2020  
Sentencing will proceed via  
video on 12/14/20 at 12:15 PM.  
SO ORDERED.



Re: United States v. Donald Smith, 20 Cr. 26 (PAC)

Honorable Judge Crotty:

Donald Smith's sentencing is currently scheduled for December 14th. With the consent of Mr. Smith, I write to request that the sentencing proceed via videoconferencing. The government objects to this request.

As the Court is aware, it has the authority under the CARES Act §15002(b), Pub. L. No. 116-135 (202) to conduct a sentencing via videoconferencing if the sentencing "cannot be further delayed without serious harm to the interests of justice." Such a finding is met here. Mr. Smith's previous counsel, Philip Weinstein, retired last spring. Following his retirement, I was assigned to represent Mr. Smith, and I have worked diligently to form a trusting relationship with him. But that has taken time. Indeed Mr. Smith pleaded guilty in January 2020, and has not yet proceeded to sentencing.

Following my advice, Mr. Smith agreed to have a psychological assessment performed, and to later undergo neuropsychological testing. The full results will be provided to the Court in a mitigation report attached to my sentencing memorandum. But as a preview, his results are highly consistent with a neurocognitive disorder due to traumatic brain injury. Additionally, his scores suggest that he is likely intellectually disabled and depressed.

In the Final Presentence Report, the Probation Office recommended a sentence of time served to be followed by close supervisions. This recommendation came even without the benefit of the Mr. Smith's mitigation report and neuropsychological testing results. Along the lines of Probation's recommendation, Mr. Smith has been closely supervised on pretrial and has performed perfectly while awaiting sentencing. But he is anxious to move forward and know his fate.

Nevertheless an appearance in person for sentencing would be risky for Mr. Smith and his elderly friends who plan to give their support to him at sentencing. They would be required to travel from Virginia where they all live together, quarantine for three days in New York, and

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undergo two Covid-19 tests before they can enter the courthouse. Those are difficult conditions to meet and I am not certain how they would find the resources to safely quarantine.

Accordingly, I respectfully request that the Court permit the sentencing to proceed via videoconference on December 14, 2020.

Respectfully submitted,

/s/ Annalisa Mirón  
Annalisa Mirón, Esq.  
Assistant Federal Defender  
Federal Defenders of New York  
(646) 745-4899

cc: AUSA Samuel Rothschild